

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

<b>In Re:</b>  <b>W.R. GRACE &amp; CO., et al.,</b>  <b>Debtors.</b>	<b>§</b> <b>§</b> <b>§</b> <b>§</b> <b>§</b> <b>§</b>	<b>Chapter 11</b>  <b>Jointly Administered</b> <b>Case No. 01-01139 (JKF)</b>
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**FEE AUDITOR'S FINAL REPORT REGARDING  
SIXTEENTH INTERIM QUARTERLY FEE APPLICATION OF  
CONWAY, DEL GENIO, GRIES & CO., LLC**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Sixteenth Interim Quarterly Fee Application of Conway, Del Genio, Gries & Co., LLC (the "Application").

**BACKGROUND**

1. Conway, Del Genio, Gries & Co., LLC ("CDG"), was retained as financial advisor to the Official Committee of Asbestos Property Damage Claimants. In the Application, CDG seeks approval of fees totaling \$150,000.00 and costs totaling \$1,703.91 for its services from January 1, 2005, through March 31, 2005.

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application. We reviewed the Application for compliance with 11 U.S.C. §330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2001, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed

Under 11 U.S.C. 330, Issued January 30, 1996, (the "Guidelines"), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals.

### **DISCUSSION**

3. We note that CDG recorded a total of 145.9 hours for the three months covering this application period (the "Compensation Period"). CDG was paid a flat fee of \$150,000.00 during the Compensation Period, which calculates to an effective hourly rate of \$1,028.10 per hour.

4. We note that in our final report regarding CDG for the 12<sup>th</sup> Interim Period, we recommended a reduction of \$220,338.94 of the \$300,000.00 in fees that Conway sought due to what we believed to be excessive charges for the time of work provided. This recommended reduction was upheld by the Court. In its application for the 13<sup>th</sup> Interim Period, CDG voluntarily reduced its fees from \$100,000.00 per month to \$50,000.00 per month. CDG has billed the Official Committee of Asbestos Property Damage Claimants at that rate for the 13<sup>th</sup> through 16<sup>th</sup> Interim Periods. CDG's effective hourly rate was \$845.07 for the 13<sup>th</sup> Interim, \$535.71 for the 14<sup>th</sup> Interim and \$934.81 for the 15<sup>th</sup> Interim.

5. We note that in the July 19, 2004, USG hearing, the Court stated, "...I can't very well fight a \$400 an hour hourly rate, but if it's going to be something like every 3 months it's going up to \$1000 folks, and I'm not approving it... In no period will somebody be awarded \$1000 an hour... Mr. Smith, I'm simply going to charge you with bringing this to my attention. If at any point in time this rate gets to be this high for any period of time for any professional, I want to know about it." See Transcript of 7/19/04 USG hearing pages 10, 11 & 12.

6. We note that while we are cognizant of the different billing structure surrounding a

fixed- fee agreement and the variability of calculating an hourly rate within that structure, we nonetheless feel compelled to bring to the Court's attention any fixed-fee billings which appear excessive. In that light, we will continue to monitor CDG's effective hourly rate and report that to the Court.

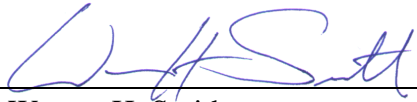
7. We note that except for the high effective hourly rate, we raise no issues with CDG's application.

### **CONCLUSION**

8. Thus we recommend approval of fees totaling \$150,000.00 and costs totaling \$1,703.91 for CDG's services from January 1, 2005, through March 31, 2005.

Respectfully submitted,

**WARREN H. SMITH & ASSOCIATES, P.C.**

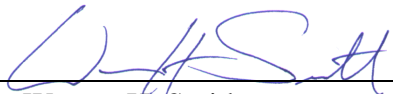
By:   
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**FEE AUDITOR**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served First Class United States mail to the attached service list on this 9<sup>th</sup> day of September, 2005.

  
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Warren H. Smith

**SERVICE LIST**

Notice Parties

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